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March 20

Mr. John Langmuir
Administrative Assistant
Executive Department
State House
Concord, New Hampshire

Dear Mr. Langmuir:

You have requested the answer to three questions pertaining to the New Hampshire Bank Commissioner's duties relative to bank examinations.

Question one is whether one hundred per cent verification of all savings accounts are required to be made by the Bank Commission's representatives?

RSA 386:21 states that there shall be a verification conducted by the Commissioner of the individual books of the depositors of every savings bank and of the due books of the shareholders of every building and loan association at least once in every four years. Section 22 provides, it shall be the duty of every depositor to present his book for verification when notified to do so.

Though there is no section or chapter concerning verifications which says there must be a one hundred per cent verification every four years, nevertheless, the entire context of the law pertaining to the Bank Commissioner's duties make it inescapable that the Commissioner is charged with making an examination to obtain the true picture of the bank to see that it is operating in compliance with the law. To do this the alleged assets must be matched against the book value; liabilities against the book liabilities. That its management is sound and likely to continue so and that the bank is solvent. Chapter 383, provides for the Commissioner's removal when there is a neglect of his duties under the law. RSA 383:10, provides that the method of examination is such as may be necessary to determine the true condition of the institution. It is further provided that the Commissioner make a "full and careful" examination of each bank or he shall be fined or imprisoned for not more than five years, RSA 383:16. It is therefore the opinion of this office that verification of bank books requires such verification as to allow the Commis-

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sioner to comply with the law. That high degree of duty he is charged with requires no less than one hundred per cent verification under his mandatory duties as imposed by the statutes.

In question two you ask whether the Federal Deposit Insurance Corporation examination or an independent auditor's examination could be used in lieu of an examination by the Bank Commissioner?

Under the present law pertaining to the F.D.I.C., which is not a supervisory organization, there is no duty to examine banks which are insured with the corporation. When examinations are conducted by the corporation the primary motivation is towards determining whether the bank is in a position sufficiently solvent to preclude the necessity of making a reimbursement under their guarantee to their depositors. All the operating funds of the F.D.I.C. are derived from insurance assessments on insured banks. Since the F.D.I.C. is not compelled by law to make such examinations there is no assurance that in the future they will continue to do so.

An independent audit of a bank does not encompass the same matter as an examination by the Bank Commissioner's representative. An auditor is not concerned primarily with the same matter as an examiner is. An examination is concerned with an appraisal of the assets and a valuation of the management as well as to see that that there has been compliance with the law. An audit is primarily directed to see that the accounting procedures are correct, that the accounts prove and the income is properly received and that expenditures are legitimate. It is true that there is some overlapping under both types of investigation. As an illustration, only recently an embezzlement occurred at a Claremont bank which was discovered by an examination by the Commissioner's office but had not shown up in a two-week audit conducted in September 1956, by certified public accountants. This embezzling had been going on for months prior to the C.P.A.'s audit and was continuing even during the period they were there.

In question three you ask whether there is any kind of legal arrangement relative to joint examinations of a member bank by the Bank Commissioner and the F.D.I.C.?

New Hampshire has 79 banks of which 23 are insured by the F.D.I.C. In the past 2 years only 3 of these 23 banks have been jointly examined by the State and the F.D.I.C. examiners. This is purely a voluntary arrangement between the two entities. Many of these banks make it impossible for a joint examination, because of the physical limitations on the size of the bank.

Sincerely yours,

William J. Deachman
Assistant Attorney General

WJD/T